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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/820,946	04/09/2004	Gary Neil Zaiger	9738		
7590 10/18/2004			EXAMINER		
LEITH MARIE GARDNER			HWU, JUNE		
1219 GRIMES AVE. MODESTO, CA 95358		Α.	ART UNIT	PAPER NUMBER	
			1661		
			1007		

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

		Appli	ication No.	Applicant(s)			
			20,946	ZAIGER ET AL.			
Office Action Summary		Exan		Art Unit			
		June	Hwu	1661			
Period f	The MAILING DATE of this commu or Reply	nication appears o	n the cover sheet wit	h the correspondence addr	ess		
A SH THE - Exte afte - If th - If Nr - Failn Any earr	HORTENED STATUTORY PERIOD MAILING DATE OF THIS COMMUNensions of time may be available under the provision of SIX (6) MONTHS from the mailing date of this come period for reply specified above is less than thirty to period for reply is specified above, the maximum sure to reply within the set or extended period for reply received by the Office later than three months need patent term adjustment. See 37 CFR 1.704(b).	NICATION. us of 37 CFR 1.136(a). In umunication. (30) days, a reply within the statutory period will apply a by will, by statute, cause the	no event, however, may a re e statutory minimum of thirty and will expire SIX (6) MONT e application to become ABA	eply be timely filed  (30) days will be considered timely.  (HS from the mailing date of this commandoned (35 U.S.C. § 133).	nunication.		
Status							
1)🛛	Responsive to communication(s) fil	ed on <u>09 <i>April 200</i></u>	<u>04</u> .				
2a) This action is <b>FINAL</b> . 2b) This action is non-final.							
3)□	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Disposit	ion of Claims						
5)□ 6)⊠ 7)⊠ 8)□	Claim(s) 1 is/are pending in the app 4a) Of the above claim(s) is/a Claim(s) is/are allowed. Claim(s) 1 is/are rejected. Claim(s) 1 is/are objected to. Claim(s) are subject to restri	are withdrawn from					
Applicat	ion Papers						
10)⊠	The specification is objected to by the The drawing(s) filed on <u>09 April 2000</u> . Applicant may not request that any object Replacement drawing sheet(s) including The oath or declaration is objected to	$\frac{4}{2}$ is/are: a) $\square$ accoration to the drawing g the correction is re	(s) be held in abeyand quired if the drawing(s	e. See 37 CFR 1.85(a). s) is objected to. See 37 CFR	, ,		
Priority ι	ınder 35 U.S.C. § 119						
a)l	Acknowledgment is made of a claim  All b) Some * c) None of:  1. Certified copies of the priority  2. Certified copies of the priority  3. Copies of the certified copies application from the Internation	documents have documents have of the priority documents Bureau (PCT	been received. been received in Ap uments have been re Rule 17.2(a)).	plication No eceived in this National Sta	age		
Attachmen	t(s)						
2)	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (F nation Disclosure Statement(s) (PTO-1449 or r No(s)/Mail Date	•		Mail Date ormal Patent Application (PTO-15	2)		

Art Unit: 1661

#### **DETAILED ACTION**

#### **Drawings**

The drawings have been approved.

#### Claim Objections

Claim 1 is objected to because of the following informalities: There are two sentences in the claim. The claim must begin with a capital letter and end with a period. Periods may not be used elsewhere in the claim except for abbreviation. See MPEP 608.01(m). Appropriate correction is required.

#### **Objection to the Disclosure**

#### 37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

#### 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In plant application filed under 35 U.S.C. 161, the requirements of 35 U.S.C. 112 are limited.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163(a) because the specification presents less than a full and complete botanical description and the characteristics which distinguish over related known varieties.

More specifically:

- A. Applicants must set forth in the specification a brief description how the new variety is distinguished from its parents.
- B. If available, Applicants should set forth in the specification the sepal's margin type.
- C. Page 12, line 28, the recitation "5Y 8.5" is unclear and incomplete according to the Munsell Book of Color. Correction is necessary.

The above listing may not be complete. Applicants should carefully compare the claimed plant with the botanical descriptions set forth in the specification to ensure completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to same.

### Claim Rejection

## 35 USC § 112, 1st and 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for reasons set forth in the Objection to the Disclosure Section above.

## **Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (571) 272-0977. The Examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached on (571) 272-0811. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NNE MARIE GRUNBERG PRIMARY EXAMINER